

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:19-cv-00614-FDW
(3:17-cr-00134-FDW-DSC-17)**

JAMES WALTER DOWDLE,)
)
 Petitioner,)
)
 vs.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)
 _____)

ORDER

THIS MATTER is before the Court on the Government’s Motion to Stay. [Doc. 8].

On November 13, 2019, Petitioner filed a Section 2255 Motion to Vacate Sentence. [Doc. 1]. The Government responded and Petitioner replied. [Docs. 3, 5]. On June 29, 2020, this matter was stayed sua sponte pending the decision of the Fourth Circuit Court of Appeals in United States v. Taylor, No. 19-7616, which was to address whether attempted Hobbs Act robbery constitutes a predicate “crime of violence” for purposes of 18 U.S.C. § 924(c). [Doc. 6]. The Court ordered that Petitioner was to file a Supplemental Memorandum on Petitioner’s motion to vacate within 45 days of the Taylor decision. [Id.]. Taylor was decided, holding that attempted Hobbs Act robbery does not constitute a predicate “crime of violence” for § 924(c) purposes, and Petitioner timely filed a Supplemental Memorandum. See Taylor, 979 F.3d 203 (4th Cir. 2020); Doc. 7. The Fourth Circuit issued its mandate in Taylor on December 21, 2020, after the United States unsuccessfully sought rehearing en banc. The Acting Solicitor General of the United States is currently considering whether to file petition for certiorari in Taylor. [Doc. 8 at 2-3]. The petition would be due 150 days from December 11, 2020, when rehearing en banc was denied.

The Government now requests that this matter be held in abeyance pending the filing of a

petition for certiorari, the United States' acquiescence in a defendant-filed petition that presents the same issue, or the expiration of the deadline to file a petition for certiorari, whichever occurs first. [Id. at 1]. Petitioner does not consent or object to the Government's motion, "leaving the decision to the Court's discretion." [Id. at 3-4].

The Court will grant the Government's request to stay this matter in accordance with the Government's request and will order the Government to notify the Court within seven (7) days once one of the three events occurs. At that time, the Court will issue an order directing further action of the parties.

IT IS, THEREFORE, ORDERED that the stay in this matter pending the issuance of the mandate in Taylor is hereby **LIFTED**, and this matter is hereby **STAYED** pending the filing of a petition for certiorari in Taylor, No. 19-7616; the United States' acquiescence in a defendant-filed petition that presents the same issue; or the expiration of the deadline to file a petition for certiorari, whichever occurs first.

IT IS FURTHER ORDERED that the Government shall have seven (7) days from the occurrence of one of these three events, whichever is first, to notify the Court of such.

Signed: March 5, 2021



Frank D. Whitney
United States District Judge

